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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1039

XENO W. PUTNAM and BESSIE L. PUTNAM,
Petitioners,

vs.

FEDERAL LAND BANK OF BALTIMORE,
Respondent.

On Petition For a Writ of Certiorari to the Supreme Court of Pennsylvania.

PETITION FOR REHEARING.

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioners respectfully present their petition for rehearing under the circumstances related in heading I which follows.

I.

STATEMENT.

The petitioners' Petition for Certiorari was denied on April 23, 1945 before either the petitioners or their counsel had seen the "Brief in Oppositon to Petition for Writ of Certiorari" which was filed at a date unknown to either.

Notice of the filing of the petition, together with a copy of the printed record in the court below, the supporting brief, and the form of acknowledgment furnished by the clerk upon the filing of the Petition for Certiorari were mailed to the respondent as provided by Rule 38 (3) of this Court.

No acknowledgment by the respondent was received within fourteen days of the filing of the petition, whereupon counsel for the petitioners on March 27, 1945 forwarded his proof of service to the clerk who acknowledged its receipt on March 29, 1945.

On March 28, 1945 counsel for the petitioners received back from the respondent the form of acknowledgment of service on which respondent asserted that the notice of filing and the record below had been received but that the petition and brief had "not been served as required by Rule 38".

Counsel for the petitioners immediately mailed another copy of the petition and brief to respondent and also mailed to the clerk the said form of acknowledgment.

On March 31, 1945 counsel for the petitioners personally visited the office of the Clerk of this Court and was informed that respondent had objected to the correctness of the record as served upon it.

Upon returning to his office counsel found in his mail, on Saturday, April 21, 1945, a copy of respondent's "Brief in Opposition to Petition for Writ of Certiorari" and dictated a letter to the clerk requesting an opportunity to reply to it. This letter was typed and signed on Monday, April 23, 1945, but before mailing it a telegram was received from the clerk stating that Certiorari had been denied on that day. In response to the letter and a telegram the clerk informed counsel for the petitioners that a petition for rehearing might be filed.

Accordingly this Petition for Rehearing is filed in lieu of a brief in reply to the respondent's "Brief in Opposition to Petition for Writ of Certiorari."

II.

REPLY.

To respondent's "Brief in Opposition to Petition for Writ of Certiorari."

ORDER OF TREATMENT.

The matter contained in the respondent's brief will be replied to in the order of that brief headed by appropriate page references to that brief.

Page 2 of Respondent's Brief.

Assertion in Respondent's Brief:

"The validity of the cited sections of the Bankruptcy law were, at no time, in issue in the course of any of

> the proceedings upon which the decision of the Supreme Court of Pennsylvania was based. The issue before the Court was primarily an issue of fact and the question involved was whether there were pending any bankruptcy proceedings on behalf of the petitioner, Bessie Putnam, at the time the trial Court decided upon the question of its own jurisdiction to make sale of the mortgaged property and confirmed the sale."

Reply: The proceeding in the Court below was a proceeding in error upon Assignments of Error filed pursuant to Rule 22 of that Court which reads as follows:

> "RULE 22. Each error relied on must be specified particularly and by itself. If a specification embraces more than one point, or refers to more than one bill of exceptions, or raises more than one distinct question, it may be disregarded."

THE ISSUE.

The issue in the court below was precisely what it was in the Court of Common Pleas, namely whether the state court had jurisdiction to entertain the Petition for Possession. That issue depended upon whether there was any proceeding pending in the Federal Court under Section 75 of the Bankruptcy Act; 11 U.S.C. 203, involving the property sought to be possessed.

On that point the following is important:

THE COURT OF COMMON PLEAS DETERMINED THE ISSUE UPON THE PLEADINGS AND NOTHING ELSE. NO EVIDENCE WHATSOEVER WAS SUBMITTED.

The opinion of the Judge of the Court of Common Pleas reads:

"Considering all the facts and circumstances in the light of authorities cited we can but concede that defendants' Answer, as a matter of law, is insufficient;" R. 103a, bottom of page.

The final order of the Court of Common Pleas which was the only order before the Court below, and necessarily therefore the only order before this Court, reads:

"the rule to show cause . . . is hereby made absolute for want of a sufficient answer by defendants and judgment is entered against defendants," R. 104a, top of page.

What is the nature of the answer?

THE ANSWER.

The answer was drawn by the defendants in the suit for possession; the farmer debtors, the petitioners here,—not by an attorney. Though it is verbose and repetitious it nevertheless effectively sets forth their defense of no jurisdiction in the state court because of conflicting jurisdiction of the Federal Bankruptcy Court under Section 75—the farmer debtor law.

It showed that:

Bessie L. Putnam, defendant (petitioner here) filed her farmer debtor petition under Section 75 as Case No. 19681 in the bankruptcy court on September 10, 1936. We quote from it:

"Under this new Section 75, the so-called Frazier-Lemke Act, Bessie L. Putnam on September 10, 1936, still unable to pay her debts as they matured but mindful of the District Court's earlier objections, filed her petition No. 19681, together with her filing fee and schedules, which were accepted and approved by the District Court as properly filed. See Exhibit A, hereto attached." R. 78a, last half of page.

This is the Exhibit A referred to:

"This is to inform any one interested that on September 15th, 1936, a petition under Section 75 of the Bankruptcy Act was filed by Bessie L. Putnam, at No. 19681 in Bankruptcy, and that an order approving said petition has been entered. (signed) G. H. Berger, Clerk United States District Court." R. 91a, last half page.

The answer continues:

"inquiry was made of the District Court as to whether petition No. 19681 had been dismissed or whether it was still pending in the District Court. To this inquiry the Clerk of the District Court on July 2, 1942 made answer that: 'Bankruptcy case No. 19681 was filed by Bessie L. Putnam on September 10, 1936. The case is still pending on our dockets.' A certified copy of this statement by the Clerk is hereto attached as 'Exhibit B'." R. 78a-79a.

The Exhibit B referred to follows:

"UNITED STATES DISTRICT COURT
Office of the Clerk
Western District of Pennsylvania
Pittsburgh, Pa.
G. H. Berger, Clerk.

July 2, 1942.

Mr. Xeno W. Putnam,
Harmonsburg, Pa.

My dear Mr. Putnam,—

I have your letter of June 29, 1942, and you are advised that Bankruptcy case No. 19681 was filed by Bessie L. Putnam on September 10th, 1936.

The case is still pending on our dockets.

Sincerely yours,
(signed) G. H. Berger,
Clerk."

R. 92a, top of page.

Quoting further from the answer:

"Later, in reply to a request of mine made on or about the middle of October, 1942, I obtained a Certificate made under the seal of the 'District Court for the Western District of Pennsylvania,' wherein the Clerk states under date of October 19, 1942 that

'the records of this Court show that bankruptcy case was filed in this district by Bessie L. Putnam, on September 10th, 1936 at No. 19681 in Bankruptcy, and that said case is pending at this date.'

A Certified copy of this Certificate is hereto attached and made a part of this answer, marked, 'Exhibit C.' "

R. 79a, middle of page.

Exhibit C is as follows:

"Exhibit 'C.'

IN THE DISTRICT COURT OF THE UNITED STATES

For the Western District of Pennsylvania

CERTIFICATE

I, G. H. Berger, Clerk of the District Court of the United States for the Western District of Pennsylvania, do hereby certify that the records of this Court show that a bankruptcy case was filed in this district by Bessie L. Putnam, on September 10th, 1936 at No. 19681 in Bankruptcy, and that said case is pending at this date.

(Seal of U. S. District Court W. D. Pennsylvania.)

Witness my hand and the seal of this Court this 19th day of October, 1942.

(Signed) G. H. Berger, Clerk."

R. 92a-93a.

THESE ARE THE FACTS PLEADED IN THE ANSWER TO THE PETITION FOR POSSESSION WHICH THE COURT OF COMMON PLEAS HELD INSUFFICIENT TO OUST THE CONTEMPORANEOUS JURISDICTIONS OF THE STATE COURT!

If such facts do not oust the jurisdiction of a State Court while a farmer debtor case is pending in a Federal Court, then Section 75 (n); 11 USC 203 (n) "The filing of a petition . . . shall immediately subject the farmer and all his property . . . for all purposes of this section to the exclu-

sive jurisdiction of the [bankruptcy] court" **MEANS NOTHING.**

Then *Kalb* v. *Feuerstein,* 308 U. S. 433 (holding in sixteen different statements that farmer debtor jurisdiction in a bankruptcy court leaves a State Court Without Power) **MEANS NOTHING.**

THE FARMER DEBTOR AND HER PROPERTY COULD NOT BE WITHIN THE JURISDICTION OF BOTH STATE AND FEDERAL COURTS AT THE SAME TIME.

The attempt to argue that no such farmer debtor proceeding was contemporaneously pending in the federal court, in the face of undenied assertions in the answer supported by three certificates of the Clerk of the Bankruptcy Court, Exhibits A, B, and C, that it was, is a mere quibble. **IT WAS AND IS STILL SO PENDING.**

To argue that the validity of a federal statute is not involved merely because a state court refuses to heed it is not worthy of judicial note. This reference is to the statement in respondent's Brief in Opposition near the bottom of page 2, where it is said that:

> "Upon the basis of the record, the Supreme Court of Pennsylvania found that the petition in bankruptcy filed by Bessie Putnam had been dismissed and was not pending at the time of the entry by the Trial Court of the order in question R-56a."

The citation of "R-56a" in the quotation immediately above is to a vacuum so far as its pertinency is concerned. It is supposed that the record citation was intended to be R 55a. which is from an opinion of the Judge of the Court of Common Pleas, in a former proceeding to set aside the

sale of this same property on the same ground that the State Court had no power to conduct it. There the Judge referred to an order of July 9, 1940 in the Bankruptcy Court which will now be examined:

LET IT BE CLEARLY UNDERSTOOD THAT THAT ORDER OF JULY 9, 1940 DID NOT DISMISS THE FARMER DEBTOR CASE. IT MERELY DISMISSED FARMER DEBTOR'S "PETITION FOR APPRAISERS TO DETERMINE THE REASONABLE PRESENT MARKET WORTH OF ASSETS".

Here are quoted the essential skeletal operative words of that order of July 9, 1940:

> "'And now, to-wit, July 9, 1940, the matter of the Petition for Appraisers to Determine The Reasonable Present Market Worth of Assets under Section 75 subsection (s) of the Bankruptcy Act, as presented by Bessie L. Putnam, debtor, . . . came on for hearing in Open Court, and . . . the above petition of Bessie L. Putnam, debtor, is hereby refused and denied.'" R. 54a to 55a.

The Judge of the Court of Common Pleas after quoting the full order of the Bankruptcy Court of July 9, 1940 concludes that:

> "The Order very clearly shows that all proceedings in the said Court are now dismissed" R. 55a, bottom of page.

When did it become the law that in the face of the categorical **certificate** of a bankruptcy court that a case is pending before it, a judge of a state court by **interpretation** of an order of the bankruptcy court may decide that the record of the Federal Court is false?

THE INTERPRETATION IS FALSE.

Because of the erroneous interpretation put upon the proceeding in the Federal Court whereby the Judge of the state overrides the Certificate of the Federal Court, the history of various Putnam farmer debtor cases in the Federal Court are here related.

1. In 1935 the petitioners, Xeno and Bessie Putnam, presented their joint petition as farmer debtors to the bankruptcy court which refused to file it.

> "Their petition and filing fee together with their schedules were returned to them promptly, the said District Court objecting to the filing of a joint petition." R. 78a, top of page.

2. Xeno W. Putnam then filed his farmer debtor petition under Section 75 (a) to (r) as Case No. 19164. Then followed the decision of this Court in *Louisville* v. *Radford*, 295 U. S. 555, holding the then **Section 75 (s)** unconstitutional, and although it had no application to cases under Section 75 (a) to (r) the Court of Common Pleas ordered the sale of the farmer debtor's farm to proceed, and the farm was sold. R. 6a.

Thereafter the Bankruptcy Court **unlawfully** dismissed this Case 19164 on the old repudiated ground of "no proposal in compliance with Section 75" ("lack of good faith"). R. 39a. Exhibit A.

3. Xeno W. Putnam then filed his second farmer debtor petition, Case No. 19671. This case was likewise **unlawfully** dismissed by the Bankruptcy Court. R. 44a.

4. Xeno W. Putnam filed still another farmer debtor case, No. 20472, which also was unlawfully dismissed on the old repudiated ground of no "reasonable proposals or plans" and "no reasonable hope for rehabilitation" and the further ground that the farmer's **unlawful** dismissal was "*res adjudicata*"! R. 28a to R. 29a.

It should be noted here that the State Court, losing faith in the validity of its preceding proceedings in foreclosure, set aside its foreclosure sale and sheriff's deed on March 3, 1938 and started over again. R. 6a, bottom of page; R. 25a, bottom of page; R. 42a, top of page.

5. Meanwhile Bessie L. Putnam on September 10, 1936 filed her farmer debtor petition as Case No. 19681 which is **THE PRESENT PENDING CASE IN THE BANKRUPTCY COURT and we will here examine it.**

This Case No. 19681 was subjected to the same **unlawful** procedures that the other Putnam petitions had been subjected to with **THE DIFFERENCE THAT AFTER DISMISSAL THE BANKRUPTCY COURT RESUMED ITS JURISDICTION AND STILL RETAINS IT.**

On August 5, 1937 Bessie's petition under Section 75 a to r for Compromise or Extension was **unlawfully** dismissed on the old repudiated song that "the debtor has not complied with the requirements of Section 75." ("lack of good faith"—"no feasible proposal"). R. 42a to R. 43a. Exhibit D.

The Bankruptcy Court regarded this as a termination of the Proceedings under Section 75 (a) to (r)—not precluding the further progress of the case into Section 75 (s) for very soon thereafter Bessie filed her petition under Section 75 (s) for a stay order and the other associated procedure, and the Court entertained it.

This petition for a moratorium under Section 75 (s) is still pending. See the three Certificates of the Clerk of the Bankruptcy Court where the case was filed and still pends: R. 91a, Exhibit A; R. 92a, Exhibit B; R. 92a to 93a, Exhibit C.

These Certificates show the case still pending as late as October 19, 1942, long after the Petition for Possession was filed on September 28, 1942. R. 72a.

Under her Section 75(s) proceeding Bessie L. Putnam filed in the Bankruptcy Court her "Petition for Appraisers to Determine The Reasonable Present Market Worth of Assets under Section 75, Subsection (s)". (See first sentence of "Order of Court" at bottom of R. 50(a) and top of 51(a).)

This was the very same kind of application that was made and denied by the farmer debtors in *Borchard* v. *California Bank*, 310 U. S. 311, where the case itself was left pending.

These dates are important:

July 9, 1940. Petition for Appraisers denied by Bankruptcy Court. R. 50(a) to R. 51(a) "Order of Court."

July 2, 1942. Certificate of Clerk of Bankruptcy Court that the case was then still pending. R. 92a, Exhibit C.

October 19, 1942. Certificate of Clerk of Bankruptcy Court that the case was still pending. R. 92a to R. 93a. Exhibit C.

THE FACT THAT THE BANKRUPTCY COURT RESUMED ITS JURISDICTION, AND STILL RETAINS IT, IS AS BRIGHT AND CONSPICUOUS AS THE SUN ITSELF.

Page 6 of Respondent's Brief.

Assertion in Respondent's Brief:

> "The argument of the petitioners completely ignores the fact that no proceedings in bankruptcy were pending when the trial Court entered its order of July 23, 1940, (R-56a) denying their petition in the nature of exceptions to the sheriff's sale."

Does this Court give higher recognition and validity to this statement by the respondent than it accords to the Clerk of the Bankruptcy Court that on July 2, 1942 "The case is still pending on our dockets"? (R. 92a, top of page. Exhibit B, last sentence). And to the same official's statement on October 19, 1942 that "said case is pending at this date"?! (R. 92a to 93a, Exhibit C).

We care no more about the dismissal of the proceedings under Section 75 (a) to (r) than this Court did in *Wragg* v. *Federal*, 317 U. S. 325, where the case was dismissed and leave to file under Section 75 (s) denied and the dismissal and denial were appealed and the appeal dismissed and certiorari denied by this Court. 95 F. (2) 252; 305 U. S.

596. When, later the farmer debtor, Mrs. Wragg, again petitioned the Bankruptcy Court to proceed under Section 75 (s) she was sustained by this Court which disregarded all specious arguments anent "*res judicata*" and former dismissal.

In Bessie Putnam's pending case the Bankruptcy Court did not refuse her right to file under 75 (s) and still keeps the case on its docket.

Does the refusal of a bankruptcy court to grant a farmer debtor's application to the Court to proceed under Section 75(s) preclude the farmer debtor from again asking the court to do its duty while the case still pends?

Page 9 of Respondent's Brief.

Assertion:

> "The facts involved in the case of *Union Joint Stock Land Bank of Detroit* v. *Byerly*, 310 U. S. 1, 60 Sup. Ct. 773, cited by the Supreme Court of Pennsylvania, are almost identical with the facts in the instant case, and that decision controls the issues here involved."

There is no resemblance whatsoever between the *Byerly* case and this one. The difference was explained at page 8 of the petitioner's Brief in Support of their present Petition for Certiorari. Even in that case where the hiatus between the decision declaring the first Section 75(s) un-

consitutional and the passing of the present Section 75(s) occasioned the loss of title, three present members of this Court vigorously dissented, saying in the first sentence of their dissent that the effect of that decision was to "largely defeat the purpose of the Act" and concluding with the statement that it acted to afford a "ready means of circumventing the Act."

Will this Court project the *Byerly* decision still further into an entirely different state of facts?

Page 13 of Respondent's Brief.

Assertion:

> "This case reaches this Court against a background which is significant. The Respondent has been seeking to liquidate this loan for nine years."

True! The kind of arguments with which the respondent has relentlessly pursued the farmer debtors through four cases has resulted in a set of records unsurpassed for unlawful orders in farmer debtor cases. **Uniformly they have been unlawful.** They outrageously violated that orderly procedure which the statute requires. Every conceivable specious and plainly erroneous argument has been urged upon both state and federal courts.

We quote from the record a few of such arguments made by the respondent:

> "That the filing of an amended petition by Bessie L. Putnam, defendant and petitioner herein, in the United States District Court on August 23, 1939, is admitted but the mere filing thereof did not constitute any restraint on your respondent to pursue its execution or on the Sheriff of Crawford County to make

sale of the real estate as advertised by him." R. 65a, bottom of page, to top of R. 66a.

"Your respondent admits having knowledge at and prior to the date of the Sheriff's sale, on September 15, 1939, of the filing of the amended petition by the petitioner in the United States District Court but even so, the filing of said petition without proper judicial restraint could not operate to prevent the sale of the real estate as advertised by the Sheriff." R. 66a, middle of page.

"That the exclusive jurisdiction given to the Federal District Court by subsection (n) of Section 75 of the Bankruptcy Act is limited in its operation to proceedings pending from subsections (a) to (r) and when the proceedings advance into subsection (s) the state Court is reinvested with jurisdiction until such time as the District Court grants the three year stay as provided by subsection (s) or the proceedings in the state Court are otherwise restrained." R. 66a, bottom of page.

It is quite apparent that other, *ad hominum*, arguments must have been pressed upon the State Court from the following quotation from its order of May 5, 1941:

"Under the Act, the stay allowed by subsection (s) is for a three year period. In the instant case, defendant and her co-title holder have for divers reasons advanced stayed the proceedings for a period in excess of five years, during which time the farm has not been operated. In consequence of which the improvements have fallen into a poor state of repair—no payments, principal or interest, have been made upon the undenied indebtedness and taxes have been allowed to go unpaid and accumulate." R. 71a, bottom of page to R. 72a, top of page.

Thus echoing the District Court in *Wright* v. *Logan*, 315 U. S. 139.

"That the law and the decisions construing Section 75 of the Bankruptcy Act are clear that filing of de-

fendant's petition on August 23, 1939 to amend her earlier dismissed petition did not operate as an automatic restraint to prevent the sheriff's sale on September 15, 1939." R. 38a, top of page.

It is true that the respondent has for nine years been seeking to liquidate this estate. The lapse of nine years during which the farmer debtors have been struggling against all odds in state and federal courts that could be put in their way by a federal agency erected to sustain farmer debtors in their efforts to maintain their farm homes —all this time and struggle is the direct result of the obstructive tactics of the Federal Land Bank, respondent. Had the farmer debtor statute been observed from the beginning this case would long since have been closed.

Let the law prevail!

Respectfully submitted,

.....

ELMER MCCLAIN,
Lima, Ohio,
Counsel for the Petitioners, Xeno W. Putnam and Bessie L. Putnam.

Lima, Ohio
May 9, 1945

Certificate of Counsel.

I certify that the foregoing petition for rehearing is filed in good faith and not for delay.

.....

Elmer McClain,
Counsel for the Petitioners.